IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2006

CORAM

THE HONOURABLE MR. JUSTICE DHARMA RAO ELIPE
and
THE HONOURABLE MR. JUSTICE S.K. KRISHNAN

WRIT PETITION No. 680 OF 2004

1. Union of India rep. By
   the General Manager
   Southern Railway
   Chennai - 600 003.

2. The Chairman
   Railway Board, New Delhi. ... Petitioners

Vs.

1. The Registrar
   Central Administrative Tribunal
   Madras Bench, Chennai-104.

2. Dr. K.A. Abraham ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records of the first respondent in O.A.No.50 of 2003 including the order dated 20.10.2003 and quash the same.

For Petitioners : Mr. R. Thiagarajan
Senior Counsel for M/s.
V.G.Suresh Kumar, R. Gunasekaran &
L. Rajarajeswari

For R2 : Mr. K. Sridhar

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O R D E R

(Order of the Court was made by Dharma Rao Elipe, J.)

Aggrieved of the order passed by the Tribunal, the Southern Railway represented by the General Manager has filed this writ petition contending with regard to the interpretation of the Rule for revising the retirement benefits counting of past service and grant of retirement benefits to the second respondent.

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2. The facts of the case is that the second respondent after completion of his M.B.B.S. Degree joined the Armed Forces of the Union of India on 22.1.1967 and served there till 14.9.1972. On retirement from the Armed Forces, he was appointed in the Southern Railway on 9.8.1978 and after holding various posts in the Railways, he retired on superannuation on 31.3.2002. He retired as the Chief Medical Director of Southern Railway. Subsequent to joining the Railways, he had surrendered the gratuity received from the Army in the year 1995 in the sum of Rs.5,000/- together with interest thereon, by making a total payment of Rs.14,203/-. Therefafter, by order dated 19.12.2005, sanction was consequently accorded for counting the period rendered in Military service from 22.1.1967 to 14.9.1972 for the purpose of pensionary benefits. Further, he made a representation to the administration contending that he was entitled to the benefit of five added years of service, as provided under Rule 2423-A of the Indian Railway Establishment Code-Volume II, which was subsequently incorporated as Rule 45 of the Railway Servants (Pension) Rules, 1993 and also similar to Rule 30 of the Central Civil Services (Pension) Rules, 1972. The representation was rejected through communication dated 14.11.2002. The second respondent has filed an Original Application in O.A.No.50 of 2003 on the file of the first respondent praying for the benefits of added years of service as qualifying service for pensionary benefits and revision of the retirement benefits, which was allowed by order dated 20.10.2003 directing the Railway Administration to grant the benefit of additional years of service as qualifying service for pensionary benefits to the second respondent and accordingly revise the second respondent's retirement/terminall benefits. The first respondent had further held that the second respondent would be entitled to the arrears of pension and allowances on such basis but without interest or costs. Aggrieved by the order of the first respondent dated 20.10.2003 made in O.A.No.50 of 2003, the petitioner has filed the above writ petition.

3. The Tribunal erred in setting aside the communication impugned in the original application on the ground that Rule 45 of the Railway Servants (Pension) Rules, 1993 which came into force only on 2.12.2003 and hence the second respondent who entered the service on 9.8.1978 and retired on superannuation on 31.3.2002 was entitled to the benefits of added years of service. It is further contended that the Tribunal failed to see that the rule position was the same even prior to 1993, in that Rule 2423-A of the Indian Railway Establishment Code Volume II and para-423 of the Manual of Railway Pension Rules, 1950, which were in vogue prior to the 1993 Rules contain a proviso similar to that found in Rule 45 of the Railway

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Servants (Pension) Rules, 1993, which categorically provides as follows:-

> "Provided that this concession shall not be admissible to those who are eligible for counting their past services for superannuation pension unless they opt before the date of retirement, which option once exercised, shall be final, for the weightage of services under this sub rule foregoing the counting of past service."

Therefore unless the past service is foregone by the concerned employee, the said employee shall not be entitled to the benefit of added years of service to be counted for pensionary benefits. Accordingly, the petitioner has exercised his option on 18.10.1995. Therefore, once he exercised his option and the same has become final. Therefore, he cannot make a representation for giving benefit of added years of service. Therefore, the impugned order is liable to be set aside.

4. Learned Senior Counsel appearing for the petitioners further submitted that in the present case, the second respondent having surrendered his gratuity and inasmuch as his military service rendered for the period from 22.1.1967 to 14.9.1972 were counted for calculation of pensionary benefits, the second respondent was consequently not entitled to the benefit of added years of service, as initially provided under Rule 2423-A of the Indian Railway Establishment Code-Volume II, which was subsequently incorporated as Rule 45 of the Railway Servants (Pension) Rules, 1993. This rule has been formulated with a view to ensure that a railway employee does not enjoy double benefits, that is one by adding the past service rendered in another organisation and another by giving the benefit of added years of service. It is further submitted that subsequent to the amendment of Rule 2423-A of the Code, clarification has been issued by the Railway Board under letter dated 4.12.1987 stating that with effect from 18.10.1987, the benefit of added years of service, as provided under Rule 2423-A would be admissible to those who retire from service or post after 31.3.1960, who otherwise are eligible under Rule 2423-A/R.II for modifying the said rule and also 423 (2) of the Manual of Railway Pension Rule, 1950. The second respondent has retired on 31.3.2002 that is after issue of the said letter dated 4.12.1987 and subsequent amendments to the code as well as the pension rules and hence the said letter and the rules are equally applicable to the second respondent. It is also submitted that the amendment was made to Rule 2423-A, under Railway Board's letter dated 20.4.1992 which stipulates that the concession provided under the previous paragraphs of the Rule 2423-A shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of retirement, which option, once exercised, shall be final, for the weightage of service under the

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said rules, foregoing the counting of past service. Therefore, the Tribunal has failed to see that a similar proviso is also incorporated in para 423 of the Manual of Railway Pension Rules, 1950, under the Railway Board's letter dated 20.4.1992 as advance correction slip number 61.

5. Learned Senior counsel for the petitioner has also relied on Rule 306(i) of the Manual of Railway Pension Rules, 1950, which clearly stipulates that a Railway servant's claim to pensionary benefits shall be regulated by the rules in force at the time when he ceases to be in service. Corresponding provision has been incorporated in Rule 6(1) of the Railway Services (Pension) Rules, 1993, wherein it has been clearly stipulated that any claim to pension or family pension shall be regulated by the provision of these rules in force at the time when a Railway servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be. Since the second respondent in the present case retired on 31.3.2002, he is compulsorily governed by the provisions of the Railway Servants (Pension) Rules, 1993, which came into force nine years prior to his retirement. In view of the above, the order of Tribunal is liable to be set aside.

6. Learned counsel appearing for the second respondent vehemently submitted that the order passed by the Tribunal is based on consideration of the provisions of law baring on the issue and also moreover, taking into his service rendered both in the Army and in the Railways in various capacities and moreover, he has got two Post Graduate degrees from 1972 to 1978. In recognition of his service, the Tribunal had granted the relief. He further relied on the judgment of the Supreme Court reported in 2000(1) SLJ 410 CAT-Hyderabad (A.R. Naidu vs. Secretary to Government of India and Another), which was already considered by the Tribunal. In paragraph-6 of the order, the judgment of the Hyderabad Bench dated 6.12.1995 in O.A.No.385/1994, which was confirmed by the Supreme Court by way of dismissing the SLP reported in 2000(1)SLJ 410 and the above said judgment was subsequently followed by the Mumabi Bench. The SLP is 16291 of 1996. Those are the cases relating to Law Assistants, who are entitled for the benefit of additional qualifying service . Therefore, it is submitted that the same ratio has been applied by the other Bench of Mumbai. Considering the facts and circumstances of the case, it is an admitted fact that the second respondent has served in the Army from 22.1.1967 to 14.9.1972. Thereafter, he joined the service in the Southern Railway on 9.8.1978 and the second respondent has exercised his option 18.10.1995 as per Rule 45 of the Railway Servants (Pension) Rules, 1993 for counting the past service for grant of pensionary benefits. Accordingly, he surrendered the gratuity received from the Army in the year 1995 in a sum of Rs.5000/- together with

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interest thereon, by making a total payment of Rs.14,023/- under order dated 19.12.1995. Thereafter, the second respondent made a representation and the same was rejected on the ground that as per Rule 45 f the Railway Servants (Pension) Rules, 1993, once he exercised his option, has become final. The original Rule 2423 A which reads as follows:-

> " An officer appointed to a service or post on or after 1st April, 1960, may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years, whichever is the least, if the service or post is one."

7. In the Rule 1 of 45 proviso No.3 that is the rule position, this rule was amended and only third proviso was added which contemplates that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opted from the date of their retirement which option once exercised shall be final for the weightage of service under the sub rule of foregoing of the counting of past service. Therefore, according to the proviso to the General Rules exercise of option is incorporated, accordingly, the petitioner has exercised his option. Further as contemplated under Rule 306 of the Pension Rules similar to Rule 6(1) of the Railway Services (Pension) Rules, 1993 which says that provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule forgoing the counting of past service.

8. Chapter II General Conditions, the Regulation of Claims to pension or family pension (1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a railway servant retires or is retires or is discharged or is allowed to resign from service or dies, as the case may be. So, in view of the restriction imposed under Rule 6, which contemplates that any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a railway servant retires etc. Therefore, as considered earlier, once the option is exercised, which has become final and for grant of pension, the rules existing as on the date of retirement of the employee has to be taken into consideration. Therefore, we are not able to appreciate the contention of the learned counsel for the

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petitioner that Rule 45 is retrospective in operation and therefore, the case of the second respondent has not been rightly considered by the Tribunal with regard the rules existing as on the date of his employment in the rules that is Rule 2423-A. Moreover, as seen from the decision relied on by the learned counsel for the second respondent the Tribunal has considered the rules, is particular Rule 306, which is similar to Rule 6 of Rules 1992, specifically makes it clear that the rules as on the date of retirement of the employee has to be taken into consideration for grant of pension on the basis of the superannuation of the employee as on the date of superannuation of the employee. Therefore, those rulings relied on by the second respondent cannot be applied to the facts of the present case.

9. In view of the above facts and circumstances of the case and consideration given by us, we are satisfied that in view of the specific provision contained in the Pension Rules 6 read with 45(1), the petitioner is entitled to calculation of his pensionary benefits, and he has exercised his option on 18.10.1995, which has become final. Therefore, the added years of service as ordered to be considered in view of Pay Commission suggestion and to extend the benefit after amending Rules to the effect cannot be applied to the facts of the petitioner's case. Accordingly, the order of the Tribunal is set aside and the writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai-104.

1 cc to Mr.K. Sridhar, Advocate, sr. 54383
1 cc to Mr.V.G. Suresh Kumar, Advocate, sr. 55072

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